

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Phil Weitzman	Team: Team # 5	CCRB Case #: 200503373	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/28/2005 2:00 PM	Location of Incident: West 43rd Street and 8th Avenue	Precinct: 14	18 Mo. SOL 9/28/2006	EO SOL 9/28/2006	
Date/Time CV Reported Wed, 03/30/2005 4:57 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/30/2005 4:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Seminara	29512	935723	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christopher Treubig	08071	935869	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Seminara	Force: Officer Joseph Seminara used physical force against § 87(2)(b)	
B.POM Joseph Seminara	Abuse: Officer Joseph Seminara frisked § 87(2)(b)	
C.POM Joseph Seminara	Abuse: Officer Joseph Seminara threatened to arrest § 87(2)(b)	

Synopsis

§ 87(2)(b) a § 87(2)(b) Hispanic social worker, called a complaint in to the CCRB on 3/30/2005 (enc. 6A-B). § 87(2)(b)'s complaint arose from the following events: on 3/28/2005 at 2:00 PM he was driving at West 43rd Street and Eighth Avenue in Manhattan with his fellow social worker, § 87(2)(b) when they were pulled over by officers identified by investigation as **Officer Joseph Seminara** and **Officer Christopher Treubig** of Midtown South, because § 87(2)(b) was not wearing his seatbelt. During the stop, § 87(2)(b) received a phone call and stepped out of the car to answer it, at which point Officer Seminara ordered him back inside. By all accounts, § 87(2)(b) did not comply with Officer Seminara's order. Officer Seminara reacted by pushing § 87(2)(b) against the car (Allegation A), frisking § 87(2)(b) (Allegation B) and telling § 87(2)(b) that he could be arrested (Allegation C). § 87(2)(b) then got back into the car and the stop concluded without incident.

§ 87(2)(b) rejected Mediation, § 87(2)(b)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) provided a phone statement to the CCRB at the time of intake on 3/30/2005 (enc. 6A-B), and was interviewed at the CCRB on 4/13/2005 (enc. 7A-F). § 87(2)(g)

§ 87(2)(b) stated that on 3/28/2005, at approximately 2:15 PM, he was sitting in the passenger's seat as his colleague, § 87(2)(b) (also a Hispanic man), drove their employer's car northbound on Eighth Avenue and began to make a left turn onto 43rd Street. The car belonged to § 87(2)(b)'s agency, which is a private social services organization, but had official plates.

Officer Seminara and Officer Treubig were standing in uniform at the corner, and Officer Treubig ordered the car to pull over. As § 87(2)(b) pulled over, § 87(2)(b) remarked to him that they were being pulled over because § 87(2)(b) was not wearing a seatbelt. Officer Treubig approached the driver's side and asked § 87(2)(b) for his license and registration. § 87(2)(b) had parked imperfectly, and after Officer Treubig's question automatically pulled the car up a few inches in order to fix the parking job, while simultaneously reaching for his identification, and then put the car in park. Officer Treubig returned to the window and § 87(2)(b) provided the information. § 87(2)(b) told § 87(2)(b) "You should tell him to show you courtesy because we're driving an official vehicle," and § 87(2)(b) agreed. § 87(2)(b) stated that in the past the colleagues have been let off with warnings after being pulled over once officers saw the official plates.)

Officer Seminara then opened the passenger's side door and yelled into the vehicle in a "commanding," annoyed and upset voice, "Before you move the car next time, why don't you notify the cop so you don't run over his feet?" and then slammed the door.

A couple minutes later, § 87(2)(b) received a phone call from his office on his cell phone and stepped outside of the car in order to speak in private. The office call was confidential, and normally § 87(2)(b) would have rolled up the window so that no one outside of the agency could hear, but in this case § 87(2)(b) had to leave the window open in order to speak with Officer Treubig. § 87(2)(b) figured that the officers had realized by this time that he was in an official car and that he and his colleague were not doing anything illegal.

After § 87(2)(b) stepped outside the car, Officer Seminara blocked his way, yelled, "Where are you going?" and ordered him back into the car. § 87(2)(b) did not get back into the car, and replied, "You don't have to be disrespectful." The two men argued back and forth a bit. Officer Seminara asked, "You want to get arrested?" and § 87(2)(b) continued to repeat that he did not have to be disrespectful.

Officer Seminara then used his left hand to grab § 87(2)(b)'s left shoulder, turned § 87(2)(b) around, grabbed § 87(2)(b)'s other shoulder, and pushed ("slammed") § 87(2)(b) into the car. The push did not hurt, and there was no injury to either § 87(2)(b) or the car. § 87(2)(b) did not resist Officer Seminara in any way. Officer Seminara then patted § 87(2)(b) down, without going into his pockets. Officer Seminara then took out his handcuffs and said, "You gonna go in or what?" § 87(2)(b) got back into the car.

From inside the car, § 87(2)(b) asked Officer Seminara for his name, and Officer Seminara opened and closed his jacket quickly, revealing his badge. § 87(2)(b) read Officer Seminara's name at this time, remembering it at the time of intake as "Semara" and at the time of his CCRB interview as "Samaria."

The stop concluded without incident and the colleagues drove off. They did not receive a summons. § 87(2)(b) felt that the officers would have treated he and his partner differently if their race had been different.

Results of Investigation

Civilian Statements

§ 87(2)(b) was interviewed at the CCRB on 4/13/2005 (enc. 8A-D). § 87(2)(g) clarified that on 3/28/2004 his job was to § 87(2)(b). On such a day, he would drive back and forth from the bus station to his office at § 87(2)(b) a few times. His duties also included reporting AWOL juvenile delinquents. At the time of the incident, § 87(2)(b) had just dropped off a group of delinquents.

Police Officer Statements

Officer Joseph Seminara of Midtown South filled out a Stop, Question and Frisk Report pertaining to the incident on 3/28/2005 (enc. 9A-B). The report indicates that the type of physical force used in the stop was, "Hands on Suspect," and contains a handwritten note, "Got in officer's face/refused to remain in auto." The report also notes that § 87(2)(b) was frisked but not searched. The report lists only "Refused" rather than § 87(2)(b)'s name.

In his memobook Officer Seminara recorded an entry for 3/28/2005 at 2:00 PM stating: "Car stop with Treubig, male passenger refused to stay in auto/furtive movements/got in officers face. Had hand in pocket. UF250 prepared." (enc. 10C)

§ 87(2)(g). Officer Seminara stated that § 87(2)(b) had his hand in his pocket while he got out of the car and refused to get back in when ordered to do so, causing Officer Seminara to fear for his safety. Officer Seminara denied pushing § 87(2)(b) onto the car. Instead, Officer Seminara placed one hand on § 87(2)(b)'s shoulder, "turned him around," and directed him to place his hands on the roof of the car, which § 87(2)(b) did without incident. Officer Seminara recalled taking his handcuffs out and telling § 87(2)(b) "if you keep acting disorderly, I'll have to place you under arrest."

The officers decided not to issue a summons for the original infraction, because § 87(2)(b) had been very courteous, and because he had a good justification for not wearing a seatbelt: the men were education truancy employees and had been following a child, and might have had to get out of the car quickly.

When Officer Seminara asked § 87(2)(b) for his name while filling out the UF250, § 87(2)(b) replied, "I'm not giving it to you."

§ 87(2)(g)

Results of Discipline and Criminal Convictions

Officer Seminara has not been the subject of any substantiated CCRB allegations since his NYPD appointment date of 7/1/2004 (enc. 4A). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Complainant CCRB History

§ 87(2)(b) has filed two other complaints with the CCRB (enc. 5A), § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Conclusions and Recommendations

Undisputed Facts

All parties agreed that on 4/28/2005, Officer Treubig and Officer Seminara stopped a car driven by § 87(2)(b) with § 87(2)(b) as passenger, because § 87(2)(b) was not wearing a seatbelt. During the stop, § 87(2)(b) got out of the car and refused to get back in when ordered to do so by Officer Seminara. Officer Seminara responded by grabbing § 87(2)(b) frisking him, and telling him that he could be arrested, at which point § 87(2)(b) got back inside the car.

Disputed Facts

§ 87(2)(b) stated that Officer Seminara pushed him against the car, while Officer Seminara stated that he never pushed § 87(2)(b)

Officer Identification

§ 87(2)(g). By Officer Seminara's own account, he played the role of the subject officer in the incident as described by § 87(2)(b) and § 87(2)(b) § 87(2)(g).

Credibility

§ 87(2)(g)
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Allegation A, Force: Officer Joseph Seminara used physical force against § 87(2)(b)

NYPD Patrol Guide Procedure 203-11 (enc. 2A) mandates that officers use "only that amount of force necessary to overcome resistance" in performance of their duties § 87(2)(g)

As discussed in Barry Kamins' *New York Search and Seizure*, a New York State appellate court has ruled in the case *People v. Forbes* that a police officer "can detain a passenger in a car during a traffic stop." (enc. 3A) § 87(2)(g)

§ 87(2)(g) Section 375.1.d of the New York City Rules and Regulations (enc. 1A), which states that no person shall "disobey a lawful order of any officer." § 87(2)(g)

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Allegation B, Abuse of Authority: Officer Joseph Seminara frisked § 87(2)(b)

As quoted in Barry Kamins’ *New York Search and Seizure*, the Criminal Procedure Law of New York State states that a police officer can frisk a suspect to search for a weapon when he or she “reasonably suspects that he is in danger of injury.” (enc. 3B) § 87(2)(g)

Allegation C, Abuse of Authority: Officer Joseph Seminara threatened to arrest § 87(2)(b)

§ 87(2)(g)

Section 375.1.d of the New York City Rules and Regulations, which states that no person shall “disobey a lawful order of any officer.” (enc. 1A) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: